EXHIBIT 26

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ADVANCED CLUSTER SYSTEMS, INC., Plaintiff, v. NVIDIA CORPORATION, Defendant.) C.A. No. 19-2032-MN-CJB

Tuesday, October 11, 2022
2:00 p.m.

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE CHRISTOPHER J. BURKE
United States District Court Judge

APPEARANCES:

SHAW KELLER, LLP
BY: NATHAN R. HOESCHEN, ESQ.

-and-

KNOBBE MARTENS
BY: CHERYL BURGESS, ESQ.

Counsel for the Plaintiff

APPEARANCES CONTINUED:

DLA PIPER
BY: STEPHANIE O'BYRNE, ESQ.
BY: CARRIE WILLIAMSON, ESQ.
BY: PETER NELSON, ESQ.

Counsel for the Defendant

THE COURT: Good afternoon, everyone. It's Judge Burke here. Why don't we go on the record and let me just say for the record that we're here this afternoon in the matter of Advanced Cluster Systems, Inc., versus Nvidia Corporation, et al. This is civil action number 19-2032-MN-CJB here in our court and we're here today with regard to a discovery dispute that's been raised by the defendants and by third-party Knobbe, Martens, Olsen & Bear, LLP for today. Before we go further, let's have counsel for each side identify themselves for the record. We'll start first with counsel for the plaintiff, who I believe is also going to be counsel for our third party and we'll begin there with Delaware counsel.

MR. HOESCHEN: Good morning, Your Honor. Nate Hoeschen here from Shaw Keller on behalf of plaintiffs and third party contact Knobbe Martens. With me on the line is Cheryl Burgess from Knobbe Martens.

THE COURT: All right. Good to be with you all again. And we'll do the same for counsel for defendant's side, again beginning

with Delaware counsel.

MS. O'BYRNE: Good afternoon, Your Honor. Stephanie O'Byrne with DLA Piper for Nvidia. I'm joined by my co-counsel, Carrie Williamson and Peter Nelson from DLA Piper. Also on the line is Sara Moore who is senior litigation counsel for Nvidia. With Your Honor's permission, Mr. Nelson will argue the remaining pieces of today's motion.

THE COURT: Okay. Thank you, counsel. And as was noted, parties raised a number of different disputes with regard to proposed rule 30(b)(6) deposition topics that have been put forward by defendants for Knobbe to testify about. And the Court resolved a couple of those disputes prior to our call today, but a number of the topics with regard to Knobbe still are at issue, so we'll take up those kind of in order. And I think the topics that are still at issue are topics 2, 3, 8A, 9, 10 and 13, I think. So we'll touch base on those and get the parties involved and I'll try to make a decision.

Let me -- I'll turn first to

Knobbe's counsel and Ms. Burgess are you going to be taking this for your side?

MS. BURGESS: Yes, Your Honor.

THE COURT: Okay. And I think the way the parties kind of argued about the topics they kind of put together topics 2, 9, 10 and 13, because there was some arguments about those that were kind of similar, although each of the topics are a little different. Maybe we can kind of start with that group and deal with them. And I guess maybe to start, I know through your letter a theme is, look, you know, okay, these topics, maybe some are relevant, maybe we think some are overbroad, but beyond that, they're seeking this information from a law firm, you know, and that's kind of like that's a little bit beyond the pale. And I gather too, you're saying that because it's not disputed that two attorneys from Knobbe who I'm assuming did a fair amount of prosecution related work on the U.S. family, including the asserted patents, are going to testify. But I guess just as to the threshold issue of is it okay for a defendant to seek information that is

in some way related to say the asserted patent in the case from the firm that prosecuted that patent and/or others that are related? How come it's not potentially okay? I mean, my guess is probably, is it unusual outside the inequitable conduct context to be looking to the prosecution firm for relevant evidence, but if lawyers there have relevant evidence, isn't it okay to seek it from a firm?

MS. BURGESS: Your Honor, in the context of the topics that they've actually served, it's not -- it's not just in the abstract can you get relevant information from a firm. I don't know that there's any law that says no, you cannot in any event get relevant information from a prosecuting law firm. But I think you have to look at the topics as written and consider whether they're relevant and proportional under rule 26(b)(1) and whether they're reasonably particular under rule 30(b)(6). And so Knobbe's issue with the topics that are still in dispute are the relevant proportionality and particularity with which the topics have been drafted.

THE COURT: Okay. Fair enough. Then let's go into the topics. And I guess maybe actually just stepping back once more, Ms. Burgess, the other subpoenas were to the two individual attorneys who I guess are Mr. Smemoe and Mr. Cannon. From what I can read from the briefs, it's hard to tell for sure, but I'm just guessing like maybe those two folks did a good amount of the prosecution work, but defendants are saying that like a bunch of other lawyers at Knobbe also did prosecution related work on these patents and the defendants are suggesting so this would be easier to just do a 30(b)(6) depo of the firm to try to capture the rest of the lawyers' knowledge instead of having to depose everybody. Is that what's going on here is that the two lawyers are going to testify individually, they did a lot of the work, but other lawyers did some too?

MS. BURGESS: Yes, Your Honor. So you're correct. It's two attorneys that they've individually noticed are individuals who did the, you know, the bulk of the prosecution work. And to clarify, there's one of the topics

relates to what they call the MGT patent and so one of the attorneys was primarily in the prosecution of the MGT patent and then the other attorney was primarily involved in the prosecution of the patent in suit and some of the related family members. And I think it's worth noting, though, that the topics as written are not limited to Knobbe attorneys involved in the prosecution of the patent in suit or even the related patents. You know, to an extent that there's any boundaries on what is a related patent, I think Nvidia's definition of related is really broad and broad in a lot of irrelevant patents. But even assuming that you can understand what the boundaries were around the relevant patents, it's not limited to attorneys who are involved in prosecution of those particular patents.

THE COURT: Understood. But unless, Ms. Burgess -- we'll hear from the defendant's side in a little bit and they'll be able to jump in then and tell me if anything I'm about to say is wrong. But here's what I understood them to be suggesting or hinting in

their letter, which is, sure, we said related patents, but actually we're happy to narrow and all we're talking about here, what we're calling the U.S. family, which is basically the asserted patent, the three other patents that were previously asserted and then three listed patent applications, so we're talking about 7 patents and/or applications. And I think on the other point you raised, I think they were saying something like, no, of course, no, we're not talking about having to prepare a witness to testify about all 300 lawyers' knowledge about subject X. We were just really talking about the other grouping of Knobbe lawyers who are not Mr. Smemoe and Mr. Cannon, like their collective knowledge. If they were meaning to frame the patents that way and, you know, kind of who counts in terms of knowledge that way, would that be a little better for you?

MS. BURGESS: Your Honor, that would certainly help. That's not something that has ever been expressed directly to us, that they would be willing to narrow in that manner, but it doesn't get a hundred percent of the way

there and I just wanted to give a couple examples of why the topics are still problematic, even if you can identify a smaller subset of patents, but the topics themselves are still overbroad. For example, topic 9 still talks about prior art known to you related to the asserted patent and related patents. So known to you means known to Knobbe and we're talking about things related to those patents. And the definition of related is extremely broad and would include anything that references or has any relevance to. So for example, for topic 9, that would mean any prior art known to any of the attorneys at Knobbe Martens related to the asserted patents and related patents, which could mean investigating every patent out there that makes reference to or includes within an IDF any of the patents and then determining whether any of the 300 attorneys at Knobbe Martens has knowledge of those and the dates that they became knowledgeable.

THE COURT: Right. And again, Ms. Burgess, for our hypo, let's assume that they're going to say, when I talk to defendant's side,

we're not talking about 300 attorneys at Knobbe. We really mean, like as far as we understand, there were seven other Knobbe lawyers who worked on prosecution, we're talking about them. I'm just making seven up, but whatever the number is, like the people beyond Mr. Smemoe and Cannon that worked on prosecution. Assume it's that, not the 300. And assume it's not the broad definition of related patents in the subpoenas. Assume it's just the U.S. family as is described on page 2 of defendant's letter. Even still, though, what you're saying is, look, so take like, you know, any piece of prior art in some way related, I don't know, one of the provisional applications or one of the now non-asserted patents that are at issue. That could be anything and, you know, I think you're saying absent a much clearer articulation of how it is that certain prior art is relevant to the asserted patent that's at issue in the case, that's just too broad. Is that a fair kind of summary of what you're saying as to topic 9?

MS. BURGESS: Yes, Your Honor. That's a fair characterization for topic 9 and I

could go through some other examples, but I think that's a good example of why the topics are still overbroad, even if you redefine you to refer to the Knobbe attorneys involved in prosecution of the asserted patents and direct families. So even if we rewrote you to include just those individuals, I think the topic's still overbroad.

THE COURT: And I gather with regard to topic 2, you would say the same about the word prosecution of, pretty broad?

MS. BURGESS: Yes, Your Honor. We think prosecution of is very broad and doesn't state with reasonable particularity what about the prosecution is relevant to any claim or defense in the case and what in particular are the topics that Nvidia wants us to investigate and prepare a witness on.

THE COURT: And then, you know, when defendants had to explain why are these other, you know, why are the other patents at issue here or patent applications at issue other than the asserted patent relevant, they try to do so on pages 1 and 2 of their initial letter

and they pointed to a couple of things. Now, one thing they pointed to was the fact that, in your willfulness allegations against them you cite to certain of the provisional applications by way of explanation of how they might have had knowledge of the asserted patent. I'm not sure I understand how your allegations about the defendant's willfulness makes testimony of Knobbe attorneys who were prosecuting the patents for the plaintiff particularly relevant here, but otherwise they did reference a dispute about at least the filing date of the asserted patent and they noted that you have, as evidence about the filing date, cited to certain of the other U.S. family members. So like, so that was one piece and then the other thing they noted was that in your supplemental initial disclosures you made reference to other of the U.S. family patents. I don't know if you did that at a point in which those patents were actually still asserted in the case, but how about at least with regard to the filing date, what's the right filing date here? Haven't they shown how at least some testimony about some of

the U.S. family members other than the asserted patent could be relevant to that issue?

MS. BURGESS: Well, Your Honor, it is not clear to me and Nvidia hasn't explained how claiming priority to an earlier family member makes the prosecution of that earlier family member relevant. I don't see the connection there. I don't think Nvidia's brief does that, but they are correct in that the asserted patent is a later filed continuation. Actually it's a continuation of I believe a continuation in part of the earlier filed utility application. But the prosecution of those earlier applications in the chain of family members is not relevant to whether the later filed patent is entitled to priority. The legal analysis for priority -- I guess I'm not clear what in the prosecution would be relevant to that legal analysis of priority and what priority --

THE COURT: I take your point there is about again back to the use of the words prosecution of, again, and the breadth of those words in the topic. I'm just trying to

figure out like can it be said that any of these other U.S. family members, including these provisional applications could be relevant at all, you know, to the claims and defenses at issue with regard to the asserted patent? And I guess I was thinking to myself, well, I don't know, maybe like if instead of saying the prosecution of the asserted patent and related patents they had said like, information about facts relating to the priority date of the asserted patent vis-a-vis the other U.S. family members, think there might be certain factual information, you know, like, I don't know, like similarities and differences between what's described in those provisional applications and what's described in the asserted patent, it could be relevant to at least an issue in the case. Is that potentially fair?

MS. BURGESS: Your Honor, that's fair. Again, I don't think we can categorically say that there's not going to be some more particularized topics that could have some relevance to an issue in the case. The problem is we don't know what that specific topic is

and, you know, I think the burden is on Nvidia to serve requests that are reasonably particular, that are understandable, where we can understand what these actual matters are for examination, so we can prepare somebody. And it seems like that policy to let them serve this overbroad, vague, you know, kind of like throw the spaghetti at the wall and see what sticks and then let them resort to the court trimming it back to something that everybody can ultimately agree has some level of relevance.

THE COURT: Got it. And just to finish out these four topics that were kind of grouped together in the briefing, topic 10 has to do with Knobbe's policies relating to patent prosecution. Sitting here I can't figure out how that's relevant to the asserted claims or defenses at issue in the case related to the asserted patent. I'm assuming you cannot as well. Topic 13 has to do with assessments of the value of dot, dot, dot. It does say the value, strength and benefit of the asserted patent. I could see like maybe if Knobbe attorneys did have information about facts

relating to the asserted patent and its asserted value, that could be relevant to damages it seems like. I don't know if you'd be able to get that info through privilege objections, but at least as to the asserted patent I could see how topic 13 might be relevant to the claims or defenses at issue in this case relating to the asserted patent. Do you disagree there?

MS. BURGESS: No, Your Honor. Again, I think we can come up with some more refined examples that could fall within the broad umbrella of this topic for something that could potentially be relevant. Again, I think, you know, it could have to be significantly paler. For example, the reference to you refers to every Knobbe attorney and so analyzing whether any Knobbe attorney has some kind of, you know, has made any assessment of the value, strength or benefit of any related patents, right? I think limiting to the asserted patent might be helpful. When you're talking about related patents, again, that's fairly broad so where's the line for related patents and how do you determine what attorneys of the 300

attorneys assigned at the firm have knowledge of related patents or have done assessments of the value, strength and benefits of those patents.

THE COURT: Ms. Burgess, anything more you want to say about these four topics 2, 9, 10 and 13, knowing we'll come back to the others that we haven't discussed.

MS. BURGESS: So I think I just wanted to touch on, you know, a couple of the relevance arguments made in the sur reply that I don't think we have talked about yet in terms of Nvidia has indicated that have an inequitable conduct defense and I think ACS would dispute that. It looks like Nvidia has tried to shoehorn inequitable conduct somehow into their interrogatory response related to unclean hands. We're not in agreement that this is properly pleaded. Let's set that aside for now. That's not the issue before us.

THE COURT: Ms. Burgess, is there a -- I'm assuming there is not currently in the case an answer in which the defendants actually plead facts about the defense of inequitable conduct. I took that as a given from your

letters, but is that correct?

MS. BURGESS: That is correct, Your Honor.

THE COURT: Okay. Go ahead. Please continue.

MS. BURGESS: So even assuming that it was somehow pled as a defense, we don't think it is, but let's just set that aside, there's no explanation as to how the topics that are at issue now are relevant even if you take those defenses as expressed in this unclean hands interrogatory response. The interrogatory response identifies certain acts or failures by one of the named inventors to disclose certain prior art. That doesn't have anything relating to the actions or failures by the prosecuting attorneys or Knobbe Martens generally, so there's nothing tying their topics to the defense as expressed in their interrogatory response.

And then the same thing goes with respect to inventorship. That's another defense that they've claimed somehow makes these topics relevant. But again, there's the inventorship

issue has to do with, you know, of course the inventorship on the asserted patent, but what they're seeking is inventorship or they're seeking to explore the prosecution of the MGT patents. This is a different patent family that may share some inventors, but they don't ever explain how the inventorship of the asserted patent relates to prosecution of this, the other unrelated patents, how the prosecution of these unrelated patents somehow relates to their inventorship defense and why inventorship of the asserted patent is allegedly incorrect.

THE COURT: Okay.

MS. BURGESS: So I wanted to touch on those two topics that we had not yet discussed.

THE COURT: All right. Thank you, Ms. Burgess. Let me turn to defendant's side and I think -- is it Mr. Nelson who is going to be taking these for defendant's side?

MR. NELSON: Yes your honor.

THE COURT: Okay. Mr. Nelson, maybe you could start -- obviously I think the plaintiff and to some extent me have had

questions about the facial breadth of the topics at issue, everything from what patents are they meant to cover, is it really meant to cover the combined knowledge of 300 attorneys at Knobbe Martens, some broad sounding words like prior art and prosecution, et cetera, et cetera. It might make sense for you to start, as it relates to these four topics, to do whatever you want to do or were prepared to do to say no, look, yes, facially the subpoena as issued may have covered X, but I'm here today to tell you that, Judge, what we're really focused on is more narrow and that relates to A, B, C and D. Is there anything you want to say to start things off in that regard?

MR. NELSON: Sure thing. Your Honor, to start, we made it very clear to Knobbe from the start that while their concerns related to the words related patents may be justified in the abstract, we've explained specifically, I could point you to the e-mail correspondence, which you may have reviewed, we expressly stated, as I believe you commented earlier, we are seeking information related to the asserted

patent and all of its parents and the provisional applications beforehand. We are also seeking information related to the patents filed on a piece of technology that was the precursor to the supposed technology related to the asserted patent. And that is covered -- we specifically stated exactly what patents were covered in that. So the concern related to the so called breadth of the word related patent is frankly not justified. And the -- the continuing to harp on that issue is a bit disingenuous given that we have expressly stated what patents fall within the definition of related patents.

THE COURT: So Mr. Nelson, just to summarize, you're really focused on the 7 patents and/or patent applications that you have collectively defined as U.S. family on pages 1 and 2 of your letter which includes the asserted patents, three other patents that were formerly asserted and then three provisional patent applications, am I right?

MR. NELSON: Yes, Your Honor. And if it would help, we expressly stated that in

exhibit 5 to Knobbe's opening letter. I can point you to that page if it would help.

THE COURT: Okay. What about, you know, the 30(b)(6) depo of the entire firm? Plaintiff's -- Knobbe's counsel keeps saying got to prepare for the collective knowledge of 300 people. Is that right or do you have something else in mind?

MR. NELSON: Your Honor, I couldn't even sarcastically ask them to do that. And that's something we explained during the meet and confer. At least I thought we did. Again, this seems like an issue that is being brought up mostly to kind of blow the proportion of this out of scope to try and -- maybe to shine a better light for Knobbe on this issue. That was not something that we stated. We stated that the main reason we asked for the firm was, as Your Honor pointed out, the two attorneys we subpoenaed individually as 30(b)(1), those were the two that signed off on the prosecution. That does not necessarily mean that they did all the work and frankly it's unlikely they did all the work. There are some

other attorneys that were involved and so our request is that those -- we're presuming that those two attorneys are going to be the ones who are going to be designated 30(b)(6) and we ask that they prepare -- they basically just go through the files of those patent applications, the families and be prepared to testify about that, because it's -- I suspect that the internal files they have are going to be for those families and it's going to be some of the information collected by those signing attorneys and anybody who worked with them. So we're certainly not asking for 300 attorneys, collective knowledge of 300 attorneys. That would be insane.

THE COURT: Any idea how many Knobbe attorneys other than the two who are going to be individually deposed in this case worked on the prosecution of these seven patents or patent applications?

MR. NELSON: That has not been told to us, Your Honor.

THE COURT: Okay. But whatever the number is, is what you're thinking of?

MR. NELSON: Yeah. Again, whenever this issue was brought up, the response was immediately that this request involves 300 attorneys and that's unreasonable. We were never told how many attorneys would actually need to be talked to or how many attorneys potentially would be involved with this, but it's certainly not 300.

THE COURT: Okay. From there, we're looking at the particular topics that we've been discussing, 2, 9, 10 and 13. Maybe we can start with 2. As I was suggesting, I could maybe see how you've demonstrated that, via your letter, some factual information about the '908 provisional and/or maybe the '573 provisional could be relevant to the issue at play in this case of what's the appropriate filing date that the asserted patent is entitled to. If that was one issue I could say, okay, the asserted patent is the patent that's left in this case, the defendants have, I think, explained to me why if you had information about facts relating to these provisional applications, that could be relevant to an issue

at play in the case regarding the filing date. But beyond that, though, you're asking for just all the information about the prosecution of these seven patents or applications. What beyond, you know, the right filing date for the asserted patent have you demonstrated is relevant with regard to these other patents and patent applications regarding this case?

MR. NELSON: Of course. So Your Honor, to begin with, the prosecution history of the asserted patent technically consists of the prosecution history of the '768 Patent and all of its parents. By definition it does consist of all of its parents and parent applications. So at the end of the day, even if we either technically just say the '768 Patent, the asserted patent, the prosecution history of that '768 Patent technically encompasses all of the parent applications including these provisional applications.

Secondly, Your Honor, this is something we explained on the meet and confer. There were a lot of examiner interviews, throughout the history of the examination of all

the parents and the asserted patent. There were other potential issues related to the responses and what the prosecution attorney said in certain responses that would have implications on the construction of the '768 Patent, as I said, because the asserted patent prosecution history consists of both the direct prosecution history for the '768 Patent and all of its parents' applications.

THE COURT: I mean, I guess maybe what I'm asking, though, is, you know, like in this litigation there's one asserted patent and that's the '768, am I right?

MR. NELSON: There is one asserted patent, to which -- through which -- which is claiming priority to numerous other patents which were previously asserted but are no longer asserted in this litigation.

THE COURT: And I guess I'm just trying to, you know -- if the plaintiff says or Knobbe says, look, is every single fact about the prosecution of U.S. provisional patent application numbers dot, dot, dot, ending in '738 relevant to what's going on in this

litigation about the '768 patent? We say no, it can't be, it's just got to be too broad. And if the defendant responds and says, you know, no, we can ask any question about any fact that has anything to do with the prosecution of provisional application number '738 or U.S. patent number '289 or the provisional ending in '573, yeah, any single fact that we want to ask about about any one of those six other patents or patent applications is automatically relevant to what's going on in this case which is about the '768. Is that your position?

MR. NELSON: Not necessarily, Your Honor. We believe that the facts -- so from our perspective, we are concerned about two things. One, the prosecution history is long. So if one of those 30(b)(6) witnesses would get up again, there's a good chance that they're not going to remember what happened for the provisional or for the first patent application that was filed. What we're asking for is for them to go back and go through what we're assuming is the file for that prosecution. We're not asking them to go out to the firm and find everything for every

other attorney. We're asking them to go through the files associated with that family, with the prosecution of that family and be prepared to testify about that, because there is a concern that they would either not remember or -- especially considering that the prosecution attorneys are partners of the law firm that have contingency interest in this case, they will not -- they will not be willing to speculate if they're not sure of something and we just want to make sure that okay, go back and review the history so that you're not speculating, you know, everything, you can answer the question.

THE COURT: But there must be aspects of the prosecution of these other patents or applications -- you know, in other words, if the plaintiff was asserting or Knobbe was asserting, and if I was inclined to agree, yeah, the way it's written is just too broad, the burden it would place on a firm, even if we're not talking about the whole firm, just a number of other attorneys to be prepared for every fact that in any way was relevant to the prosecution of each of these six other

applications or patents, if I was concerned that was too broad, I'm sure it must be that in your minds the defendants have some topics that they think they're particularly interested in asking about and there's probably -- there's got to be some happy medium where you don't have to give away everything about the nature of the questions you're going to ask. And then on the other hand, you probably could, I'm guessing, narrow things down a bit by saying, look, you should be prepared on these aspects of the prosecution of these six other patents or applications. Couldn't defendants do that? I'm assuming you could, right?

MR. NELSON: Yeah, Your Honor. If we need to narrow it, I think we would be -- and I thought we made this clear, that we're talking about the prosecution history. So if we were to narrow it, a fair narrowing is typically everything related to the prosecution history. In other words, the things that were filed, the things that were received, the examiner interviews and I think some of the other issues were, again, ignoring the 300 attorney aspect,

the prior art known, related to the asserted patents as in topic number 9, we're not -- the general idea with this one, I think again, I thought we made this clear during the meet and confer, was we're mainly interested in the specific pieces of prior art that we have been discussing in this litigation. And then that was kind of the reason why we mentioned some of those in separate topics.

THE COURT: Do you have those pieces of prior art in your mind? Like, are we talking about seven pieces of prior art or 27 or 100. Like, what more can you tell me, when you say the piece of prior art we've been talking about in this litigation, how broad is that?

MR. NELSON: We're talking about the pieces of prior art that were mentioned in our final invalidity contentions. I mean, I'm trying to see if -- I mean, for example, Your Honor --

THE COURT: I'm not trying to put you on the spot for an exact number. General sense, are we talking about, you know, talking about a lot or a little or something in between?

MR. NELSON: We're not talking about many. I think we're talking about 10 to 15 specific pieces of prior art generally. I mean, some of those pieces of prior art are, I mean, are large, but at the end of the day, we're not talking about a massive number of things. We're talking about, again, going through the file history or the internal Knobbe file history, going through them and saying, okay, we -- were we aware of this, was this disclosed, why was this not disclosed, do we believe it was relevant, if we didn't believe it was relevant, why didn't we. That kind of stuff.

THE COURT: With regard to topic 10, what does Knobbe prosecution policies or practices have to do with claims and defenses at issue in this case as to the asserted patent?

MR. NELSON: Well, for one it has to do with -- kind of going back to the disclosure aspect of what was known and/or -- what was known, disclosed and/or not disclosed. It has to do with the -- I think you could give a broad aspect. If we were to ask them, did you

tell -- if we were to ask a prosecuting attorney, did you tell either of the inventors X, Y or Z, they would have -- they would have a perfectly valid privilege objection. However, if we were to ask them about what their general practices were regarding what they generally told clients, that would not be subject to a privilege objection. So it has to do with the kinds of things that were submitted to the patent office, how things were approached, how clients were generally handled. Those were the kinds of things that were in mind. Those relate to mostly to the invalidity contentions and the potential inequitable conduct that was brought up earlier.

THE COURT: And inequitable conduct, is that pleaded?

MR. NELSON: It has not been asserted as a defense in an answer, but it has been fully disclosed.

THE COURT: Okay. I think unless -- just to tell you, I can't think of a scenario, unless there's something you think I'm missing, where -- if an inequitable conduct

defense wasn't pleaded in an operative pleading, it would be in the case in a way that you could tell another party to provide discovery about it. I mean, we have whole satellite litigations about whether allegations of inequitable conduct are successfully pleaded in pleadings. I mean, are you asserting by way of this discovery dispute motion that you should be able to get discovery to inequitable conduct even though it's a currently unpleaded defense?

MR. NELSON: Well, at the end of the day my understanding was -- to answer your question generally, yes, Your Honor. Maybe not necessarily --

THE COURT: I mean, I say defense. I mean really it's a claim. Right? You're making a claim of inequitable conduct, a counterclaim, I suppose, right? Isn't that how it would come up here?

MR. NELSON: Potentially, yes.

THE COURT: You'd be asserting that inequitable conduct occurred for which you'd have a burden to prove certain elements, so yeah, it would have to show up as a

counterclaim in your answer and counterclaims, I would think. But, okay. Well, putting it aside for now, though, maybe last question would be about topic 13. I gather that's asking for information that Knobbe might have about the value in part of at least the asserted patent and/or the other patents at issue. How is that topic relevant to the claims or defenses at issue in the case?

MR. NELSON: At the end of the day, Your Honor, this one has two issues. One, this was one of the ones where we said if Knobbe, if they agreed Knobbe was not going to testify about this, we would withdraw. They didn't agree. So at end of the day we have to assume that someone from Knobbe will testify regarding this. Second, Your Honor, this has to do with whether or not there were any internal thoughts regarding value and strength, what aspects of the claims made sense or did not make sense, what did they believe was previously known in the art. That's kind of where this is going.

THE COURT: Okay.

MR. NELSON: Again, this would also potentially relate to any communications with third parties.

THE COURT: So it's not meant to get to like are you aware of a document that says that, you know, the claims of the asserted patent are worth a million dollars. I could see if there was such a document that might be relevant to certain damages issues. That's not what you're getting at here?

MR. NELSON: If such a document existed and was given to a third party and discussed with a third party, that would be potentially relevant, but otherwise it's anything regarding the internal thoughts of the attorneys of the strength or weaknesses of the patent.

THE COURT: Okay. All right. Mr. Nelson, anything further about these four topics before we move on to the other two?

MR. NELSON: Just a quick note, Your Honor. I got the impression you were not terribly fond of the inequitable conduct related argument. My only request is should you decide

to deny that or deny it in part, my only request is that it's without prejudice should we later decide to come back, should we plead and potentially bring such a claim because we would then need to depose the prosecuting attorney.

THE COURT: Sure. Yeah. I mean, nothing that I'll say today with regard to the discovery dispute is meant to preclude from, if I wish to, to add an inequitable conduct claim into the case by way of amendment to your pleadings if that's what you choose to do. I mean, you know, I have no idea. But my only -- the only thing I was trying to get across is the way I'm thinking of it is I can't understand how, as a way of establishing why certain of these topics will provide relevant evidence to the claims or defenses at issue in the case, it could be claimed that the topics would do so because they provide evidence of inequitable conduct if that is a claim that the defendants are currently not making. And I was inviting you, if there's something I'm missing about that thought process, feel free to let me know, but otherwise that was my thought process. But

nothing I'm saying here today is meant to preclude you from attempting to plead a counterclaim of inequitable conduct in the case at all. So I'm happy to put that on the record.

Okay. Ms. Burgess, let me turn back to you and I would like to speak briefly about the other two topics at issue, but is there anything you want to add by way of response to what you heard about the topics we've just been discussing.

MS. BURGESS: Yes, Your Honor. A couple quick points on those and thank you for letting me go back to address those. So there was some discussion with respect to I believe topic 2 on what Nvidia is truly seeking with respect to prosecution of the asserted patent and the related patents. And a couple points they raised was first, it sounds like they don't think the individuals who have been noticed would necessarily be prepared to address the file history if they don't review it for the deposition. And so the 30(b)(6) I guess is intended to ensure that those individuals do, in fact, go back and review and try to refresh

their recollection on what happened. And my thought to that is, again, I think the prosecution of the asserted patent, the way it's worded is still overly broad, right? I mean, if all Nvidia wants is for the attorneys to go back through and read the file history, you know, that's one thing. But if they actually want them to be prepared to discuss the prosecution of the asserted patent, that would require more preparation than just going back and reviewing the file history. And I think we would need to know what particular topics those individuals need to be prepared on, because --

THE COURT: I'm sorry, Ms. Burgess. Do you know how many other Knobbe attorneys other than the two individuals who are going to be deposed were involved in prosecution of the U.S. family?

MS. BURGESS: Your Honor, I don't have the exact number of how many attorneys have billed to that matter, but I will say it's not going to be large. We're not approaching anywhere near the 300 attorneys. So the firm is going to be probably under 10 individuals that

were substantively involved, but again, I can't tell you for sure because I haven't checked billing records and I apologize for that.

THE COURT: And when are Mr. Smemoe and Mr. Cannon's deposition scheduled or have they be scheduled?

MS. BURGESS: Your Honor, we haven't scheduled them. And we haven't scheduled them because we have already indicated to Nvidia that they would, in fact, be the 30(b)(6) designess, one or more of them would be the 30(b)(6) designees depending on the topic, so we would like to just do it once and so Nvidia agreed -- we agreed that they could take those, you know, outside the time frame for fact discovery so that we could resolve the dispute on the 30(b)(6) topics before we have those depositions.

THE COURT: Okay. All right. Let me let you finish out with regard topics 2, 9, 10 and 13.

MS. BURGESS: Okay. So with respect to topic 2, in addition to understanding, you know, kind of what particular

aspects of the prosecution Nvidia wants the individuals involved in prosecuting to refresh on and be ready to address, Mr. Nelson also mentioned, you know, the prior art in the final invalidity contentions. And so not all of that prior art in those invalidity contentions is necessarily reflected in the prosecution of the patents, of the patent in suit or the family, so again, it's not clear. You know, it sounds like during this conversation he's expanded it beyond just the prosecution now to their knowledge about specific pieces of prior art that may or may not have been contemplated during prosecution. So I -- I wanted to note that on topic 2.

On topic 10, Mr. Nelson mentioned that they really want to understand, again, what was known and disclosed or not disclosed and kind of the general practice of the attorneys involved in prosecution. And again, I think the topic itself, topic 10, does go beyond that. Right? Topic 10 is all practices of all attorneys regarding prosecutions and that could involve policies or practices involving when to

interview or whether they do an in-person or not in-person. There's a lot of policies or practices that individual attorneys may have and the topic again is not limited to what Mr. Nelson was stating during the argument as to what, what types of things Nvidia might want to ask about. And so again, in order to prepare any witnesses, we would need to know what practices and policies in particular for those attorneys involved in the prosecution of the asserted patent are at issue and the topic simply doesn't provide that level of specificity.

And then the last one I wanted to make with respect to topic 13, Nvidia has indicated that they have to assume that Knobbe is going to testify because Knobbe does not want to stipulate that they would not testify. And I think that's backwards. I think Nvidia has the burden of providing topics that are proportional to the needs of the case, that are relevant, that are proportional and that are stated with reasonable particularity. And if they haven't done so, you know, Knobbe does not have to

respond to those topics and also Knobbe does not have to agree not to testify at trial. We have noted on the record that we don't intend to present testimony at trial, but there's a lot of hypotheticals as to what could happen at trial that we can't necessarily anticipate at this point and so we're very hesitant to stipulate to something when Nvidia, particularly during the negotiations on these topics, was reluctant to provide any level of specificity on the particular allegations and I think still is lacking some particularity in terms of what they're really looking for. So I think it's improper to have Knobbe stipulate, make some kind of broad stipulation on something they won't do in the context of a hypothetical trial when Nvidia has been kind of hiding the ball on what they think ultimately may happen at trial and what their allegations may actually be. Plans to testify at trial, I don't think that's a fair assumption. Because we won't stipulate that we won't. I just don't think that's an appropriate approach to the topic.

I think Nvidia should be required

to serve topics with reasonable particularity, that are proper topics that can be responded to and they haven't done that.

THE COURT: Okay. And let's just talk briefly about the other two topics which are topics 3 and topic 8A. With regard to topic 3, I think I understand from the defendant's letter that's on the attachments why it is that MGT generally, the toolkit and the patents that describe it can be relevant and are relevant to the asserted patent and the origin of the inventions described therein. So my guess is on topic 3 it's just the word prosecution that -- my guess is you're not going to say MGT as a topic area is necessarily irrelevant, it's just the breadth of the word prosecution. Is that what you're saying?

MS. BURGESS: Your Honor, that's correct. And so in the underlying litigation the plaintiff, ACS, has provided discovery regarding the MGT product or I guess product development, and you know, produced the patent, but the prosecution of those patents, we simply don't understand and I don't think Nvidia has

really ever explained how the prosecution of those patents relates to any issue in the case. So Nvidia's justification is that there's a statement by one of the named inventors that the technology in the asserted patent is an improvement to MGT, the MGT technology, but we don't see how that justifies broad, undefined discovery regarding the entirety of the prosecution of the MGT patents. I mean, there certainly are other technologies out there that the claimed inventions may improve upon, but I don't think that makes the prosecution of any patents related to any technology that the invention may improve upon relevant and proportional to this case.

THE COURT: Okay. And then with regard to 8A, it looks like that -- and your objection, it looks like that in another proceeding, the plaintiff did say look, here are certain facts that we think are actually relevant to objective indicia or secondary consideration. Those facts we're putting out there into the world, we think they're important to that issue, they're known, so what if, if the

request was focused on the facts that plaintiff had previously noted that it itself believed were relevant to secondary consideration, wouldn't that be a way of avoiding the concern you raise in your letters about you having to guess about, you know, making legal conclusions about secondary considerations of what might be relevant?

MS. BURGESS: So Your Honor, I don't disagree that some information regarding the factual underpinning or secondary considerations could be relevant, but if we're talking about facts, number one, it's not clear why these wouldn't be topics for the parties to the litigation versus the attorneys representing ACS. You know, Knobbe Martens as the attorneys representing ACS of course submit factual information and legal arguments on behalf of clients, but it's not clear how Knobbe, why Knobbe as a law firm would be the appropriate party to provide testimony regarding those secondary considerations. And it does appear to require a level of legal analysis, even to prepare somebody to respond, because it's

talking about any secondary considerations of the asserted patent and any related patents. So we would have to then consider, okay, what other possible secondary considerations information would Knobbe have that is perhaps not in the IPR information that we submitted and prepare somebody on that.

THE COURT: Ms. Burgess --

MS. BURGESS: Because the topic is not limited to just -- I'm sorry, go ahead.

THE COURT: Ms. Burgess, at least in your experience, have you seen a patent case where outside of the inequitable conduct context a party has sought deposition testimony from a law firm who is in some way kind of related to the patents in suit? Like how rare do you think this is?

MS. BURGESS: Your Honor, I have not been involved in any cases -- and I've been involved in several -- responding to various subpoenas of Knobbe because Knobbe does a lot of patent prosecution, and I can't recall ever being involved in a subpoena where they wanted to, to get testimony from Knobbe essentially

regarding, regarding validity of the patents, not just the prosecution of the patents. And I've never had a case where as litigation counsel Knobbe has been subpoenaed to provide testimony in a case based on their role as litigation counsel in that case. But I would say it's rare from my personal experience. I'm not saying it doesn't happen, but I'm not aware of it happening ever or frequently.

THE COURT: Right. I mean, again, to me it seems like is it theoretically possible that an attorney for, you know, who prosecuted certain patents might have relevant information about say a fact relating to secondary considerations? Seems like it's very possible. Just don't know -- it does often seem like there are other ways to get that info and I don't know how often parties seek it through these means and I guess that's what you're saying. All right. Ms. Burgess, I want to try to conclude so is there anything further on these two topics before I turn back to Mr. Nelson?

MS. BURGESS: Yeah. So Your Honor, your commentary did make me think of one

thing. I have seen instances where during prosecution the prosecuting attorney has provided some secondary considerations type of information to the patent office to overcome a rejection. So, for example, I've seen, you know more statements by the invent -- sworn statements by the inventor to counsel in favor of permitting the claim. So I guess I can see a context where a prosecution attorney might have some information regarding secondary considerations of nonobviousness, but it doesn't sound like that's what Nvidia is looking for in this case. And so -- but I just wanted to amend, because I just thought of that.

THE COURT: Okay. Thank you. All right. Mr. Nelson, back to you. Just focusing on, again, to topic 3 and 8A, maybe starting with 3, is there more you can tell me about what in particular you're really likely to be focused on with these questions?

MR. NELSON: Yes, Your Honor. At the end of the day, the reason we are focused on this is to put it in perspective is, as you pointed out, the named inventor stated that this

one specific piece of technology was a precursor to the technology claimed in the asserted patent. That's why we're so interested in this one particular piece of technology. And again, we're interested in -- there were numerous discussions had with the examiner during the prosecution. We're interested in several statements that were made in the patents and when they were added and whether or not they relate back to -- and when they relate back to some things. At the end of the day, there are several different aspects to the MGT patents that we're interested in.

THE COURT: Okay. And with regard to the secondary considerations, you have to try to convince me that, Judge, look, this is not an overly broad topic that requires Knobbe to draw some kind of legal conclusions about what might be relevant secondary considerations and what facts might possibly be asked about, but there's some more limited subset of information that you think the topic kind of more fairly calls for that they should be able to provide.

MR. NELSON: The things -- we're

interested in -- yeah, to put it in perspective, we know that the two attorneys who were the prosecuting attorneys were also kind of like outside counsel in terms of their work related to licensing and other sorts of activities. We are interested in kind of whether or not the claims were -- I mean, in addition to being improvements upon it, were they improvements upon any other technology or allegedly improvements upon any other technology? Was there any skepticism? Were there people who were not skeptical. It's hard to say. I think one -- one theme that's kind of been throughout this conversation today is -- I think one of the main themes that have been going on, kind of the fear that Knobbe will not be prepared for the deposition. I think that is kind of the overarching theme that we've been having today. And the theoretical theme has been that they will not be prepared and that we will then seek to compel an additional deposition. And I think that theme has kind of permeated the conversation to the point that the concern is we want to narrow everything down to the point that

they can specifically prepare Knobbe witnesses to answer exact questions, in other words, give Knobbe the road map of things that Nvidia wants to ask and then have them prepare on those specific individual items so that there's no chance of us moving to compel an additional deposition. I think that's a little unfair, given that, again, we have some thoughts, but it's hard for us to be able to fully explain everything without knowing what they're going to say.

Also, just -- I also just want to make clear that we are not seeking information from litigation counsel. We are seeking information solely from prosecution counsel. That seems to be a divide that has not been as clearly articulated as I hoped it would be.

THE COURT: Okay. All right. Thank you, Mr. Nelson. Counsel, I think I have enough. We've been going for a little over an hour. So let me go ahead and just give you a decision and also try to give you some guidance more broadly on this issue. And so because I'm going to provide a decision here, the transcript

of today's teleconference will serve as the substance of the Court's order.

And that is that with the caveat that I'll give give in just a second, I'm going to grant Knobbe's request for a protective order and to quash and deny the defendant's cross motion to compel the information contained in the rest of the disputed topics. Because, as they are currently written, I believe that the topics are overbroad and that they're breadth, in light of the burden that it would put on Knobbe to prepare witnesses to testify about them, would outweigh any prospect for obtaining relevant evidence that the topics might provide. And so I'm going to grant Knobbe's request and deny defendants.

That said, I believe for reasons I'll explain in just a moment, I think it's probably the case that were defendants to edit their rule 30(b)(6) subpoena and narrow it considerably, that they probably could make a case that some 30(b)(6) testimony with regard to a narrower group of topics could be both relevant to the claims and defenses at issue in

the case and proportional.

And so having said that, let me try to provide some additional guidance based on what I've heard from the parties. The first thing I'd say, as we noted in the letters, a theme of plaintiffs was that it's unusual for a party in defendant's shoes to be seeking the kind of information that's being sought in this subpoena and by the subpoena, by the way, I'm talking about the subpoena, rule 30(b)(6) subpoena found at exhibit 3 of plaintiff's initial letter, unusual for that type of information to be sought from a firm, a law firm that happened to be prosecution counsel in a case where as here, a claim of inequitable conduct, for example, is not currently pleaded and to me it seems unusual. I can't remember having dealt with it, especially so if two of the individual attorneys who spent the most time prosecuting the U.S. family at issue are going to testify anyway. It does seem unusual. I don't know that I've come across this kind of request. And I think it does create real burdens for Knobbe. There are some number of

other lawyers, sounds like less than 10, but more than just a few who may have worked on prosecution here and there's efforts that have to be undertaken to make sure that the collective knowledge of all those people, even if the subpoena is narrowed to just those people, which I think it would be, it's fairly provided. And the broader that the topics are, the greater that burden. Even though it's unusual and as written would be burdensome, I can't say it's improper or impossible that rule 30(b)(6) subpoena of the prosecuting firm in a case like this couldn't be appropriate if it was narrowly tailored to get to relevant evidence. It does strike me that prosecuting attorneys, other than the two that spent the most time on prosecution, could have knowledge of relevant facts relating to claims or defenses at issue in the case, particularly as to the asserted patent. And it's possible that, you know, the questions about those facts may not necessarily be, been withheld via privilege assertion. And so I think it's possible to reframe the subpoena. It's just that as it currently

stands, I think it's an unusual subpoena that is too overbroad.

In terms of the particular topics we discussed, just a few notes. Topic 2, I agree with plaintiff that reference to the prosecution writ large of these seven patents or patent applications seems overbroad. In discussion today it sounds as if the defendant's side is interested in particular aspects, quote unquote, of that prosecution history, perhaps including having the deponents be knowledgeable about the file history. There may be ways to narrow that topic that renders it non-objectionable.

When we went to topic 9, which again, as plaintiff I think rightly notes, I say plaintiff, but I mean Knobbe rightly notes, calls for the witnesses to be prepared about all prior art in any way related to any of these seven patents or patent applications, that is very broad. In discussion here today it sounds like the defendant's side may be particularly focused on 10 to 15 pieces of prior art or asserted prior art that they think are relevant

to the claims or defends at issue in the case. That could be a different story.

Topic 10, I'm not sure how Knobbe's practices or policies regarding prosecution are relevant to what's in the case right now. I'm not sure that I heard a great explanation on today's call. It could be that they are, but hard for me to say.

And with regard to topic 13, there I don't think what I've heard today suggests that topic is relevant. In fact, when I asked about relevance, defendant's side simply said well, we're asking about it simply because the plaintiffs haven't told us they won't testify about it. That's really not a good assertion as to relevance.

With regard to topic 3, as I've suggested on the call, from what I understand I do think there are facts related to MGT and probably related to the patents that incorporate MGT and its technology. That could be relevant to the inventions related to the asserted patent and/or claims and -- claims or defenses at issue in this case. I'm not sure that every fact

relating to the prosecution of the MGT patents writ large is still relevant. And again, I think there may be subcategories of this information that on our call today the defense has said they're really after that might be a way to really narrow this request that could make the subpoena make sense.

Similarly as to secondly considerations, I think again, it may be possible that as to particular facts that have been cited in the past by plaintiffs as being assertedly relevant to that subject matter, if the topic was narrowed to focus on those particular facts, again, there may be a way to frame this topic in a way that can survive objection.

So it's all to say that for now I'm granting Knobbe's motion and denying plaintiff's. I'm sorry, denying defendant's motion. I'm suggesting that defendants may want to think about significantly narrowing the topics at issue and providing a revised proposed subpoena and I would really suggest that the parties maybe do some meeting and conferring

before that happens so that they can try to work out a sufficiently narrowed set of topics that could make sense here.

Lastly, I'll just say, I agree with defendants that, you know, it's not right to make one side give up an absolute detailed road map of all the questions they're going to ask during a rule 30(b)(6) deposition, but there's also a happy medium between the breadth of the subpoena here and something that is actually appropriately tailored to get to relevant information in a non-burdensome way. And I think in order to hit that middle ground, defendants are going to have to provide at least some more specific information about the topics they're interested in, even if it doesn't amount to a detailed road map of all the questions they're going to have.

With all that said, we've been going for about an hour and 20 minutes and we need to end our call. I think I've resolved the motions for now, provided as much guidance as I can to the parties about what will happen in the future.

The only other thing I would add to the parties' benefit as the parties have seen, I recently issued an order resolving a number of disputes that have cropped up in the case in the last couple of months. Going forward if there are further disputes that can't be resolved, I'll hear argument about those in court. I do that because in cases like this where there is now quite a large number of disputes that have been presented, it does raise concerns with the Court about whether the parties really are sufficiently meeting and conferring before bringing issues to the Court. That said, I'll also tell you that I'm doing that for your benefit as well, because in cases in which Judge Noreika is involved and this one in which I've worked on in the past, if the parties don't do a better job of kind of appropriately focusing on what issues you really need to be brought and what don't, I have seen instances where the parties continue to abuse the discovery dispute process and that results reducing the parties' trial time if they were to put forward discovery disputes at that stage and

lose. So I'm trying to kind of gently give you the hint that something is starting to seem a bit out of whack in terms of the shear number of discovery disputes that I'm seeing and to try to help you make sure that on the one hand the Court can be here to resolve the disputes that really need resolving, but on the other hand that things don't get so out of control that ultimately it hurts your ability to present your case going forward. So do with that information what you will.

All right, counsel, with all that said, unless there's anything further and maybe I'll pause just to ask is there anything I need to clarify procedurally before we end our call today on plaintiff's side, Ms. Burgess?

MS. BURGESS: No, Your Honor. Thank you.

THE COURT: Okay. On defendant's side, Mr. Nelson?

MR. NELSON: Two quick points of clarification, if I could, Your Honor. Firstly, just -- I just want to ask, I understand you're saying you're basically saying please re-serve

the subpoena with more specific topics. Is that kind of what you're basically ordering or you're suggesting? I just wanted to clarify that.

THE COURT: Sure. I mean, what I've ordered is that the subpoena has been quashed. A protective order has been issued. This subpoena that's in exhibit 3 before me, it's a nullity. It will not be utilized to obtain testimony. It is significantly overbroad. It should have never been issued in the way it was issued. And it has -- unfortunately that overbreadth has created a lot of litigation that ultimately has involved the Court's time. So where we currently stand is that that subpoena is a nullity, but what I'm suggesting is that the defendant might be able to submit another subpoena to Knobbe that revises the proposed topics here to make it much more sensible, in a way that even if Knobbe did object, what might ultimately permit testimony on a 30(b)(6) basis. And I'm trying to give you some, some hints as to how it is that you might do that in a way that could both ultimately allow the defendant to obtain some of this

testimony and ideally to do so in a way that doesn't involve the Court any further. So I mean, that was my intent. Is there anything about that that is unclear?

MR. NELSON: No. I just wanted to clarify that? Did that make sense, Your Honor? The only concern I have, Your Honor, is I understand what Your Honor was saying regarding specific pieces of prior art. My only concern is topic 12 calls out one of those specific pieces of prior art and Your Honor granted the request to quash number 12. Is there a way we could ask about prior art that Your Honor would think would be more suited, because I'm concerned if we were to specifically list out the prior art under topic 9, we would run into the same problem that we ran into with topic 12?

THE COURT: Well, what I would offer you is that topic 12, at least the way it was -- the way it was phrased and in conjunction with topic 11, appeared to the Court to be written in a way that it could broadly ask for information about a general subject matter area that in some way relates to computing, as

opposed to some much more particularized issue that may have relevance to the claims or defenses at issue in the case. If there is a piece of prior art that in some way is related to SSTW that is asserted, you know, to be relevant to the invalidity case here and that defendants could demonstrate that, it's possible that that could be a more particularized subject matter that could be appropriate. So the point of the Courts's order as to the way topics 11 and 12 appeared to be framed, they appeared to be broad references to broad categories of general information about computer related topics. Which is, seems unusual and not particularly helpful. So that's what I was intending to signal with my prior order.

MR. NELSON: Understood, Your Honor. Thank you for the clarification.

THE COURT: Okay. All right. Thanks, counsel. Wish everybody continued health and safety and we'll go off the record and end our teleconference today. Take care.

(End at 3:26 p.m.)

State of Delaware)
)
New Castle County)

CERTIFICATE OF REPORTER

I, Stacy M. Ingram, Certified Court Reporter and Notary Public, do hereby certify that the foregoing record, Pages 1 to 65 inclusive, is a true and accurate transcript of my stenographic notes taken on October 11, 2022, in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 11th day of October 2022, at Wilmington.

/s/ Stacy M. Ingram
Stacy M. Ingram, CCR

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